S.B. Civil Misc. Appeal No.1096/2005

Smt. Pemi.
vs.
All Public.

Date : 9.11.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. SK Malik, for the appellant.

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According to learned counsel for the appellant, though the appeal has been admitted and notices have been served upon the general public but short point involved in this appeal is whether the appellant, mother of deceased Jimna Devi w/o Kirta Ram, is entitled to receive the benefits of life insurance policy for Rs.25,000/-. Therefore, according to learned counsel for the appellant, the appeal itself may be heard finally because of the reason that the trial court rejected the appellant's application filed under Section 372 of the Indian Succession Act. The appellant also has placed on record an application under Section 151 CPC and annexed affidavit of Khema Ram s/o Koma Ram who is husband of the appellant and father of deceased and affidavit of one Jugal Kishore s/o Narsingh Ram, who was alleged to be agent of LIC and who insured deceased Jimna Devi.

It appears from the facts of the case that Smt. Jimna Devi was murdered by her husband. The police filed challan against Jimna Devi's husband and a criminal case no.79/2002 (32/2002) was registered wherein the learned Sessions Judge

convicted said Kirta Ram vide judgment dated 9.7.2003.

According to learned counsel for the appellant, since Kirta Ram murdered his wife Smt. Jimna Devi, therefore, under law, he was not entitled to any of the properties of his wife and the court below committed serious error of law in denying the succession certificate despite the fact that the appellant gave her statement and produced certified copy of judgment of conviction of said Kirta Ram.

It appears from the reasons given by the court below that the court below observed that in view of Ex.3, copy of judgment passed in criminal case no.79/2002 (32/2002), Kirta Ram was convicted for offence under Sections 498A and 304B IPC, but the court below also observed that it is not clear from the evidence of the appellant whether any appeal has been preferred by Kirta Ram against his conviction order. Be it as it may be. The fact is that according to learned counsel for the appellant himself, no notice was issued to said Kirta Ram by the court below and he has not been given any opportunity to contest the allegation of murder levelled against him by the appellant.

Learned counsel for the appellant submits that even in a case if an accused is acquitted of charge of murder, then also the civil court can take a different view and may hold the alleged murder to be a disqualification to inherent the property of the deceased. Even if it is so, then also, the husband of Jimna Devi, who was legally entitled otherwise

for the property of deceased and who was nominee in the insurance policy, was entitled to opportunity of hearing and without affording opportunity of hearing to said Kirta Ram, no order could have been passed by the court below on the application filed by the mother of deceased under Section 372 of the Indian Succession Act, therefore, only on this ground alone, the appeal deserves to be allowed.

In view of the above, this appeal is allowed, the order dated 22.7.2005 is set aside and the matter is remanded to the court below to give notice to Kirta Ram, husband of Smt. Jimna Devi and thereafter decide the matter afresh in accordance with law.

The appellant may appear before the court below on 27.11.2006.

(PRAKASH TATIA), J.

S.Phophaliya